



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7814033

Date: MAR. 17, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an engineering manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a "Senior Quality and Safety Engineer" at [REDACTED] [REDACTED]⁵. Previously, she was employed as an engineering manager for [REDACTED], a subsidiary of [REDACTED], from January 2017 until November 2017.⁶ From December 2004 until March 2016, the Petitioner worked as body shop welding engineer, body shop superintendent, vehicle operation manufacturing manager, and production manager for [REDACTED] of Venezuela.

Regarding the Petitioner's claim of eligibility under *Dhanasar*'s first prong, she initially indicated that her proposed endeavor involves working "as a production engineer in executive and managerial capacities in the field of automobile manufacturing." In response to the Director's request for evidence, she stated that she intends to continue working as an engineering manager for companies "in the automotive and manufacturing industries that are in need of my specialized knowledge regarding manufacturing, and continuous improvement of safety and quality processes in their internal operations." The Petitioner further explained that she seeks "to plan, direct, and coordinate technical activities in engineering and manufacturing projects, as well as in safety planning to improve the standards, and exceed customer expectations all around the United States." In addition, she contended that her proposed undertaking includes "working to develop and improve quality, reduce costs of projects, and implement lean, 5S and Kaizen techniques – a system of continual improvement, which is a component of lean manufacturing."

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner presented the official academic records for her Mechanical Engineering degree from Universidad [REDACTED] in 1997 and her Master's degree in Business Administration from the Universidad [REDACTED] in 2008. Her evidence also includes an academic credentials evaluation indicating that these Venezuelan degrees are the foreign equivalent of a Bachelor of Science degree in mechanical engineering and a Master of Business Administration degree from an accredited U.S. college or university. See 8 C.F.R. § 204.5(k)(3)(i).

⁵ The record includes a January 2019 letter from [REDACTED] Global Quality and Safety Director for [REDACTED] [REDACTED] stating the Petitioner is employed as its "Global Quality Improvement Manager" and that her role is "to support not only our global quality objectives, but global safety as well." She also offered documentation of job offers from [REDACTED] and [REDACTED]. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁶ [REDACTED] supplies promotional products such as badge holders, bags, blankets, drinkware, lighting, pens, stationery, and other products.

The record includes articles and reports relating to the U.S. [] industry, its benefit to our nation, and challenges facing this industry. This documentation highlights the industry's scale and its positive economic contributions, including long-term sustainable job creation.⁷ Additionally, some of the articles mention a shortage of qualified workers in the U.S. [] industry. The Petitioner also provided articles discussing the U.S. manufacturing industry's need for immigrant engineers; the growth of immigrant engineers in our country's workforce; the increasing number of foreign-born science, technology, engineering, and mathematics (STEM) workers in the United States; the manufacturing industry's benefit to our nation; and the widening skills gap in U.S. manufacturing. Furthermore, she submitted information about college-educated immigrants in the United States, women professionals in engineering, the role of engineering in society, and the growing demand for vocational skills as baby boomers retire. The record therefore shows that the Petitioner's proposed endeavor has substantial merit.

In denying the petition, the Director concluded that the Petitioner had not shown that the potential prospective impact of her proposed endeavor rises to the level of national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the Petitioner’s statements reflect her intention to provide valuable engineering management services for her employer, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her employer and its operations to impact the field of production engineering or the U.S. manufacturing industry more broadly at a level commensurate with national importance.

⁷ For example, a November 2014 Center for [] Research report, entitled “Accelerating the Growth of the U.S. [] Manufacturing Industry at Home, Rather than Abroad,” states that “each job a [] plant produces eleven additional jobs in the U.S. economy.” Furthermore, this report indicates that [] investment is “of critical economic value not just to the community and state hosting the investment, but to the entire region around the [] plant, typically spanning several states as part of the overall supply chain.”

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.⁸ Without sufficient documentation regarding any projected U.S. economic impact or job creation attributable to her specific work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's activities would reach the level of "substantial positive economic effects," so as to demonstrate their national importance under the first prong of *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁸ For instance, with respect to the Petitioner's job offer from [REDACTED], the scope of that company's [REDACTED] [REDACTED]'s production alone is not sufficient to demonstrate her proposed endeavor's national importance. Rather, we must examine the prospective impact of her specific endeavor as a [REDACTED] rather than the scale of that plant's entire operations. Here, the Petitioner has not demonstrated that the wider economic effects of [REDACTED] factory operations are implications of her specific proposed work as [REDACTED]. Nor has she shown that her proposed endeavor for [REDACTED] and its manufacturing projects stands to impact the [REDACTED] industry, her field, or the U.S. economy more broadly. Likewise, the Petitioner has not demonstrated that her proposed undertaking as "Senior Quality and Safety Engineer" for [REDACTED] has broader implications for the production engineering field, the U.S. manufacturing industry, or our nation's economy.